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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 502, 538, and 552

[GSAR Case 2022-G517; Docket No. GSA-GSAR-2023-0028;

Sequence No. 1]

RIN: 3090-AK60

**General Services Administration Acquisition Regulation;
Reduction of Single-use Plastic Packaging**

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add a new provision and clause to identify single-use plastic free (SUP-free) packaging availability for products under the Federal Supply Schedules with the goal of reducing single-use plastic packaging.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER] to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2022-G517 to: Regulations.gov: <https://www.regulations.gov> via the Federal eRulemaking portal by searching for "GSAR Case 2022-G517". Select the link "Comment Now" that corresponds with GSAR Case 2022-G517. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2022-G517" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite GSAR Case 2022-G517, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Adina Torberntsson, Procurement

Analyst, at *gsarpolicy@gsa.gov* or 720-475-0568. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at *gsaregsec@gsa.gov* or 202-501-4755. Please cite GSAR Case 2022-G517.

SUPPLEMENTARY INFORMATION:

I. Background

As one of the largest Federal purchasing agencies, the General Services Administration (GSA) purchases an enormous variety of different products. Despite product diversity, one element that is consistent across these acquisitions is the presence of product packaging and shipment packaging. Single-use plastic packaging has an additional cost that is often built into the proposed price, or the price is later realized in the cost of waste management. In addition, the cost of cleaning up environmental pollution and the cost of impacts to human health created by single-use plastics are often not accounted for in the price of the product.

A large portion of plastic waste comes from plastic packaging alone, and much of this packaging is designed to be used only once. This rule represents a small step in addressing the larger problem of too much plastic waste.

GSA amended internal policy guidance in the GSA Acquisition Manual (GSAM) Change 138, Case 2021-G528¹ to address acquisition planning as it relates to waste, sourcing, efficiency, and content management. GSA is now seeking a regulatory action that will be applied to its Federal Supply Schedules (FSS).

Multiple factors contributed to the decision to propose this regulatory action. These factors include: a) existing policy and guidance, b) GSA Acquisition Policy Federal Advisory Committee (GAP FAC) recommendations, c) Advanced Notice of Proposed Rule (ANPR) public comments, and d) current industry practices. More detailed information is provided below on the various information reviewed in the development of this rule.

Objectives:

This proposed rule addresses the following:

- Defines SUP-free packaging and single-use plastic packaging in 502.101 *Definitions*.
- Adds a new FSS provision to identify SUP-free packaging at 552.238-XXX. This provision requires the offeror to identify whether they do or do not offer SUP-free packaging. If the offeror provides SUP-free

¹ <https://www.acquisition.gov/archives/change-138-gsam-case-2021-g528>

packaging, it will also identify whether the SUP-free packaging is standard or must be specified by the ordering official.

- Adds a new FSS SUP-free Packaging Availability clause at 552.238-YYY. This clause includes a requirement to identify whether SUP-free packaging is available as the standard shipping practice, or at a premium or discount rate. Contractors that offer SUP-free packaging are encouraged to highlight SUP-free packaging in their price list and marketing materials.

GSA encourages ordering activities, when placing FSS orders and establishing blanket purchase agreements (BPAs), to include a preference for sustainable solutions such as SUP-free packaging. GSA will also highlight industry partners that make SUP-free packaging by utilizing a new product icon in its ordering systems, such as GSA Advantage!®. The overall intent is to encourage industry partners who collaborate with GSA to reduce this critical waste stream, and to be acknowledged for their efforts in furtherance of this endeavor.

GSA will examine further ways to update its e-tools. This may include tools such as the environmental aisle, green procurement compilation tool, and others to include an icon or other identifier for SUP-free packaging.

Existing Policy and Guidance

Executive Order 14057 (December 8, 2021)

Executive Order (E.O.) 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*, Section 207, specifically addresses plastic pollution by referencing the Save Our Seas Act, Public Law 116-224, and promoting a circular economy.

In February of 2022, the GAP FAC referenced E.O. 14057 when recommending that GSA take action in addressing single-use plastics in federal acquisitions.

Federal Sustainability Plan (December 2021)

The Federal Sustainability Plan outlines the path for Federal Operations to achieve net-zero emission procurements by 2050. To do this, the plan directs the federal government to maximize procurement of sustainable products, as well as reduce waste. As a petrochemical product primarily manufactured using petrochemicals, single-use plastic is a product type whose reduction would address the plan's goals to reduce emissions.²

Environmental Protection Agency (EPA) Draft National Strategy to Prevent Plastic Pollution (April 21, 2023)

² [Federal Sustainability Plan](#)

The EPA published a draft national strategy to prevent plastic pollution,³ which consists of three overarching goals: reduce pollution during plastic production, improve post-use materials management, and prevent trash and micro/nanoplastics from entering waterways and remove escaped trash from the environment. GSA can support this national strategy through this rulemaking to reduce single-use plastic packaging.

Other State and Local Government Policy Efforts

In planning the approach to this rule, GSA reviewed state and local government policies on reducing waste from single-use plastics such as California's Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54).⁴ This statute requires removal of all single use plastic packaging that is non-recyclable and non-compostable within the statutory timeframe. As the fifth largest economy,⁵ California's legislation is a great indicator that the market can react to a reduction in single-use plastic packaging. Multiple states have followed suit with similar legislative actions to reduce single-use

³ [EPA Draft National Strategy Prevent Plastic Pollution](#)

⁴ Allen, Chapter 75, Statutes of 2022, was signed into law on June 30, 2022.

⁵ <https://www.bloomberg.com/opinion/articles/2022-10-24/california-poised-to-overtake-germany-as-world-s-no-4-economy>

plastic packaging, including Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont⁶.

GSA Acquisition Policy Federal Advisory Committee (GAP FAC)

Recommendations

The GAP FAC was established to provide recommendations specific to GSA to drive regulatory, policy, and process changes in acquisition.⁷ The GAP FAC is comprised of multiple stakeholders to include academics, non-profit organizations, industry, and government employees.

The policy subcommittee initially focused on steps GSA can take to ensure climate and sustainability issues are fully considered in the acquisition process, specifically researching the topic of single-use plastics.

The GAP FAC identified risks associated with single-use plastics, including the use of redundant packaging, the cost for disposal, as well as the environmental justice issues raised by production, use, and waste management disposal of single-use plastics. The GAP FAC advised GSA that many single-use plastics and packaging are difficult

⁶ <https://www.ncsl.org/environment-and-natural-resources/state-plastic-bag-legislation#:~:text=Eight%20states%E2%80%94California%2C%20Connecticut%2C,banned%20single%2Duse%20plastic%20bags>.

⁷ <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee>

or impossible to recycle or compost and end up in landfills or other waste management facilities, which are often located in or near disadvantaged communities. The advisory memo provided by the GAP FAC also highlights the Federal Sustainability Plan and discusses a net-zero procurement goal by 2050 established by E.O. 14057.

The GAP FAC recommended⁸ that GSA pursues rulemaking to reduce plastic waste. They highlighted that 36% of all plastic produced is packaging material.⁹ The overall recommendation to pursue rulemaking aligns with public feedback received during the ANPR that was open for public comment from September through November of 2022. The rulemaking recommendations include developing pre-award incentives or post-award rewards to suppliers for reducing unnecessary plastic packaging in shipping materials, or product packaging materials, demonstrated through waste reduction plans or third-party ecolabels.

Advanced Notice of Proposed Rule Public Comments

An advanced notice of proposed rulemaking (ANPR) was published in July of 2022 ([87 FR 40476](#)) with a 60 day response deadline, which was then extended an extra 3 weeks

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<https://www.gsa.gov/system/files/GAP%20FAC%20RECOMMENDATION%20REPORT%202023-01%20%283%29.pdf>

⁹ <https://www.science.org/doi/10.1126/sciadv.1700782>

to meet the demands of all interested parties ([87 FR 54937](#)). The results of the ANPR were overall favorable with thousands of people signing statements of approval and submitting those as comments to the agency.

Some comments reflect a misunderstanding of GSA's role and the objective of the ANPR. As an acquisition agency, GSA is looking to leverage the acquisition system to reduce incoming single-use plastics packaging when Federal agencies use GSA contracts to acquire products.

Multiple respondents raised concerns about the environmental impact of products that are predominantly biobased, but may have either a plastic coating (for waterproofing), or might be a biobased plastic where it is unclear how to compost it. While these concerns do present real challenges to packaging, the intent of this rule is not to address biobased products or regulate packaging but rather to build conditions to reduce the single-use plastic waste stream associated with purchases through GSA's Federal Supply Schedule.

Some comments focused on recycling policies. While important, many of these comments are outside of GSA's control and mission. Additionally, only 8.7% of plastic

waste was recycled¹⁰ in 2018, and that rate dropped to 5-6% in 2021. Given the low percentage of plastic recycled,¹¹ and the challenges with GSA affecting change in this area, GSA did not include recycling policies in the scope of this rulemaking.

Multiple ANPR respondents provided feedback identifying concern if a product is not properly packaged and is thereafter damaged that would pose a greater environmental impact. To address those concerns, GSA is incentivizing the use of SUP-free packaging, as defined by the agency, not mandating it. The proposed rule encourages GSA's industry partners to promote their Federal Supply Schedule contract through a new GSA Advantage!® SUP-free packaging product icon. Additionally, GSA will encourage its customers to consider packaging when making purchasing decisions through training and customer outreach.

Industry Practices and Consumer Trends

Overall review of applicable online articles, as well as review of companies' available shareholders reports, indicates that a reduction in single-use plastic is

¹⁰ <https://www.smithsonianmag.com/smart-news/the-us-recycled-just-5-percent-of-its-plastic-in-2021-180980052/#:~:text=Of%20the%2040%20million%20tons,and%20The%20Last%20Beach%20Cleanup.>

¹¹ <https://www.smithsonianmag.com/smart-news/the-us-recycled-just-5-percent-of-its-plastic-in-2021-180980052/>

positive for marketability of a company, or displaying the company's values.

One historic high-profile case for a corporate change to packaging was McDonald's Corporation in 1990. Customers were concerned with the amount of polystyrene trash that was being produced. McDonald's pursued a change in packaging materials, rather than polystyrene¹² recycling because it was not economically advantageous to do so. In making this change it highlighted that the company could be economically successful on a global scale, while still acting in the interest of the environment and the consumer.

Online reviews of companies that sell a predominantly plastic product, such as electronic companies, have also shown positive trends in reducing single-use plastic packaging with the goal of reducing such packaging to zero. An example of this is Apple Computers. In the company's 2022 environmental report the company highlighted a 75% reduction in plastic packaging as seen in 2021 when compared to where the company was at in 2015.¹³ This indicates that not only is such a reduction achievable.

¹² <https://www.nytimes.com/1990/11/02/business/packaging-and-public-image-mcdonald-s-fills-a-big-order.html>

¹³

[https://www.apple.com/environment/pdf/Apple Environmental Progress Report 2022.pdf](https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2022.pdf)

Under this circumstance it makes sense for GSA to identify ways to encourage the move towards SUP-free packaging.

Apple disclosed in the report that in 2021 they moved away from molded foam packaging to corrugated cardboard to absorb the shock of transport, and were able to continue with their current suppliers to make this change. Apple stated that they saved 400 metric tons of single-use plastic by changing their packaging alone.¹⁴ The report continues that Apple is making these decisions to not only be environmentally conscientious but to also remain competitive in the market.

Small businesses are also adopting this trend for product specific packaging. An example of this is Monadnock Paper Mill (MPM)¹⁵, which is the oldest operational papermill in the United States. Located outside of Bennington, New Hampshire¹⁶. The mill has maintained operations by adapting over time, but also by promoting sustainability in their products to include packaging. The

¹⁴ Apple Environmental Report, page 42,
[https://www.apple.com/environment/pdf/Apple Environmental Progress Report 2022.pdf](https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2022.pdf)

¹⁵ For NAICS Code 322120 for paper mills the size standard is 1250 employees. MPM is designated as a small business per that NAICS.
<https://www.encyclopedia.com/books/politics-and-business-magazines/monadnock-paper-mills-inc#:~:text=Monadnock%20Paper%20Mills%2C%20Inc.%20is,small%20paper%20mill%20in%20America.>

¹⁶ <https://www.mbtmag.com/global/article/13215337/inside-americas-oldest-continuously-operating-paper-mill>

MPM business strategy highlights that to stay competitive over 200 years, you have to adapt and be forward thinking. The MPM looks to replace traditionally plastic products with paper ones¹⁷.

In addition, small businesses that sell on behalf of a large business manufacturer can make their packaging options a value-added component, thus adding competition where previous waivers were required¹⁸.

Survey data has shown that overall, customers' do not want plastic packaging,¹⁹ and studies²⁰ find that people prefer sustainable brands.²¹ Overall 72% of consumers²² worldwide are actively buying more sustainable products, with this trend continuing.

These industry examples highlight that reducing single-use plastic packaging can be accomplished, without negatively impacting the product or the customer's experience.

¹⁷ <https://www.forbes.com/sites/jimvinoski/2019/07/10/monadnock-paper-mills-celebrates-200-years-of-continuous-operation/?sh=3a2e273d44c1>

¹⁸ See Federal Acquisition Regulations (FAR) 19.505(c) for additional information.

¹⁹ <https://www.forbes.com/sites/solitairetownsend/2018/11/21/consumers-want-you-to-help-them-make-a-difference/?sh=474c27d46954>

²⁰ The Elusive Green Consumer, Harvard Business Review, Aug. 2019
<https://hbr.org/2019/07/the-elusive-green-consumer>

²¹ <https://www.barrons.com/articles/two-thirds-of-north-americans-prefer-eco-friendly-brands-study-finds-51578661728>

²² <https://www.forbes.com/sites/blakemorgan/2021/04/19/customers-hate-plastic-packaging-so-why-do-companies-keep-using-it/?sh=7664ce9192c6>

II. Discussion and Analysis

In review of existing legislation, agency regulations, GAP FAC recommendations, ANPR public comments, and market data, GSA determined that reduction is the best starting point for the agency, as well as our industry partners, in addressing single-use plastics.

Although there could be multiple opportunities during an acquisition's lifecycle to address product packaging, GSA decided encouraging industry partners to offer SUP-free packaging, to include either product or shipping packaging, for products awarded on a FSS contract was the best starting point. The FSS program is a long-term governmentwide contract with commercial companies that provide access to millions of commercial products and services at the best value, in terms of cost, quality and service.

The Federal Supply Schedules makes buying easy and efficient with the use of modern technology to connect government buyers and industry. This rule will provide flexibility for contracting officers to determine if this is a competitive element specific to what they are procuring.

In review of current GSA acquisition supplemental policies, there is a need to address single-use plastic

waste as it relates to packaging and single-use plastic product waste, and trends around this topic. To reduce this waste-stream, GSA is proposing to revise its regulations when establishing Federal Supply Schedule contracts as further described below.

GSAR Part 502 Definitions

The regulatory changes include providing definitions for single-use plastic packaging as well as SUP-free packaging. The definitions for single-use plastic packaging and SUP-free packaging take into account the needs of the agency, market trends to include consumer demand, and guidance received from both the ANPR and the GAP FAC.

These definitions were developed by adopting what some state legislatures have done, such as California in defining single-use plastic packaging. Additional guidance in developing these definitions came from reviewing both the Federal Trade Commissions (FTC) Green Guides²³ on product packaging and the International Organization for Standardization (ISO) ISO 18601:2013,²⁴ which addresses packaging.

GSAR Part 538 Federal Supply Schedule Contracting

²³ Federal Trade Commission, www.ftc.gov, Part 260 Guides for the Use of Environmental Marketing Claims

²⁴ ISO 18601:2013 Packaging and the environment – General requirements for the use of ISO standards in the field of packaging and the environment <https://www.iso.org/obp/ui/#iso:std:iso:18601:ed-1:v1:en>

To implement the proposed clause and provision for the Federal Supply Schedule, the prescription language in Part 538 has been updated to accommodate this change and require the new clause and provision to be included at the Federal Supply Schedule contract level.

GSAR Part 552 Solicitation Provisions and Contract Clauses

The intent of this rule is to encourage FSS contractors to adopt and promote SUP-free packaging instead of single-use plastic packaging. To do this, an existing clause needs to be amended, and a new clause and provision introduced.

GSAR Clause 552.238-88 GSA Advantage!®

The change to 552.238-88 GSA Advantage!® highlights the GSA SUP-free packaging icon that is being implemented in support of this case.

GSAR Provision 552.238-XX Single-use Plastic (SUP) Free Packaging Identification

This new provision provides the opportunity for GSA industry partners to identify if: 1) they are able to provide SUP free packaging; and 2) SUP free packaging is a standard part of their offering or must be specified by the ordering activity. The provision also identifies potential for a single-use plastic free packaging preference based on

the proposed packaging label in GSA's online catalogs to promote sales.

GSAR Clause 552.238-YYY Single-use Plastic (SUP) Free Packaging Availability

The new clause includes general statements of behaviors that GSA wants to encourage industry partners to adopt, the definitions that apply to the clause, and applicable procedures for SUP-free packaging.

GSA is defining SUP-free packaging as it relates to the agency and the Federal Supply Schedule. This definition will be incorporated into different electronic system enhancements in the form of an online icon that identifies those contractors on GSA Advantage!®. Industry partners are invited to identify any price premiums or discounts for SUP-free packaging.

III. Expected Impact of the Rule

This analysis includes both the cost and benefit impacts to both the public and GSA. The analysis includes identifying relevant products, developing a distinguishable icon, and developing internal guidance to help contracting activities learn how to apply searching for the icon to procure the environmentally preferable products.

The rule is specific to GSA's FSS program, with the intent of significantly reducing the single-use plastic waste stream. When voluntarily pursued, this action will reduce the Government's waste consumption, and potentially save industry partners money by having them reduce unnecessary packaging as described in some of the high-profile case studies mentioned in section I.D. Industry Practices and Consumer Trends.

It is expected that by reducing the packaging's overall bulk, industry will be better positioned to ship their items efficiently and effectively. Reducing excessive bulk packaging has proven effective in increasing the amount of goods that can be loaded for transportation and is therefore helpful in the distribution of products.

General Compliance Requirements

Focusing the regulatory changes on FSS contractors will enable GSA to incentivize contractors to voluntarily provide SUP-free packaging information through GSA's online system. The estimated cost per contractor is \$1,796.14. The calculations as to how GSA got to this estimate are further described in section III.C.

The SUP-free packaging identification provision allows FSS contractors to identify products that are either packaged or shipped without single-use plastic packaging.

The rule also includes a clause for the contractor that allows for either a price premium or discount for SUP-free packaging when such a premium or discount is consistent with their commercial practice.

Benefits

This rule is intended to benefit GSA and customer agencies by reducing the single-use plastic waste stream, and also FSS industry partners by providing a new opportunity to showcase their responsible environmental stewardship.

The Federal Government is the world's single largest purchaser of goods and services, spending over \$694 billion²⁵ in contracts in Fiscal Year 2022 alone. Public procurement can shift markets, drive innovation, and be a catalyst for adoption of new norms and global standards. Since the Federal Supply Schedules are the premiere entry point for commercial contractors to sell products (and services and solutions) to the Federal Government, the goal is to encourage the adoption of a new procurement norm to reduce single-use, unrecyclable, difficult to recycle, or frequently littered products plastic waste. Practices

²⁵ A Snapshot of Government-Wide Contracting for FY, April 15, 2023, <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2022>.

introduced or highlighted for the Federal Supply Schedules can easily be adopted into other Government contracts.

Overall, the proposed rule is intended to benefit the public by encouraging positive behaviors in reducing waste, and reducing product costs by building in efficiencies. The rule is an initial step to continue to work with industry partners in addressing the intersection of waste materials and logistical efficiency in providing better packaging. It is critical that GSA take this first step in working with our suppliers in developing sustainable solutions together to meet mutual future goals.

Estimated Public Costs

The following is a summary of the estimated cost impacts to the public in addressing this new requirement to reduce single-use plastic packaging. These costs are incurred one-time up-front and are not recurring to participating contractors.

1. Regulatory Familiarization

Regulatory familiarization includes the amount of time and effort it takes a company to become familiar with the requirements of the rule. The identification provision and availability clause speak to the behaviors that GSA wants to see industry adopt when doing business under GSA contracts. The time to read over and digest the

information provided in this rule is negligible. The provision is similar to other self-identifying provisions utilized in Government acquisition.

For this reason, the proposed regulations require more of a familiarization in learning how to register in the etool; the assumption is 1 hour of time. GSA calculated the time based on the agency's subject matter expertise. We utilized the total number of Federal Supply Schedule contracts. The formula to calculate this cost is 14,000 contracts²⁶ multiplied by 1 hour at a GS-12²⁷ equivalent rate. The total for this would equal \$1,083,880.

2. SUP-Free Packaging Identification

The costs to comply with the SUP-free packaging identification provision includes time for the offeror to analyze their product catalog, identify existing SUP-free offerings, identify potential new (SUP) packaging offerings, and complete the provision questions.

The anticipated average time, based on GSA's knowledge of the schedule programs, to analyze the existing product

²⁶ This number is derived from a rolling average of data from the FAS Schedules Sales Query (SSQ) dashboard for all FSS contractors (<https://d2d.gsa.gov/report/fas-schedule-sales-query-plus-ssq>). Baseline for FY20 was 14,145; FY21 was 14,109; FY22 was 14,343. Average number of FSS contractors for FY20 through FY22 is 14,199, rounded to 14,000.

²⁷ 2023 Rest of US, 12 Step 5 x 2.0 fringe = \$77.42; the rate is adjusted upward by 100% to adjust for overhead and benefits.

catalog is 1 hour, however if this assertion is incorrect the agency welcomes industry feedback on this calculation or the following time calculations. The anticipated average time to identify existing and potential new SUP-free packaging offerings is 1 hour. The anticipated time to answer the provision is 0.1 hours. The formula to calculate this cost is 14,000 contracts multiplied by 2.1 hours at a GS-12²⁸ equivalent rate. The total for this would equal \$2,276,148.

3. SUP-Free Packaging Availability

The costs to comply with the SUP-free Packaging Availability clause includes time for the offeror to research and determine price premiums or discounts for SUP-free offerings and submit the information.

The anticipated average time to research and determine the applicable pricings is 20 hours. The anticipated time to complete the submission is 0.1 hours. The formula to calculate this cost is 14,000 contracts multiplied by 20.1 hours at a GS-12²⁹ equivalent rate. The total for this would equal \$21,785,988.

4. Summary of Public Costs

²⁸ 2023 Rest of US, 12 Step 5 x 2.0 fringe = \$77.42; the rate is adjusted upward by 100% to adjust for overhead and benefits.

²⁹ 2023 Rest of US, 12 Step 5 x 2.0 fringe = \$77.42; the rate is adjusted upward by 100% to adjust for overhead and benefits.

The total estimated public cost of compliance with this rule, if all FSS contractors adopted this voluntary requirement, would be \$25,146,016. The 14,000 participants are a conservative estimate since the offeror's may choose if they want to provide SUP-free packaging as defined. The 14,000 represents if all contractors were to comply, with an average cost per contractor of \$1,796.14.

Once recorded, there is no anticipated additional cost during subsequent years of performance unless the offeror is providing additional SUP-free packaging options. However, this cost would be absorbed with the cost the contractor would experience any time that they modified their Federal Supply Schedule price list, which they would do regardless if the rule was issued.

With the Schedule contractors' identification of SUP-free packaging being voluntary, the indirect benefits to adopting this change far outweigh the costs. FSS Contractors who voluntarily comply will have a competitive advantage by being able to market themselves utilizing the new SUP-free packaging icon on GSA Advantage!®. Schedule contractors are able to invest in this change which may provide greater visibility on GSA's electronic tools to Federal buyers. With the market trending in this direction, accepting this change may assist GSA Schedule contractors

in their overall marketing efforts within the private sector as well.

GSA Costs

1. Update to GSA e-Tools

GSA reviewed various electronic tools that could support this rule. At this time the agency plans to utilize existing online tools such as GSA Advantage!® which has the benefit of keeping costs low by utilizing IT infrastructure that already exists, and the added benefit of industry partners knowing how to utilize the system. If there are alternative GSA tools that would be more beneficial to utilize, then please provide that feedback.

Capitalizing on the user interface knowledge, for both the GSA and industry, is pivotal in being able to implement the rule quickly.

The estimated hours to update the existing systems is 800 hours (assuming 5 employees working full time on this project for 4 weeks) at a GS-12³⁰ equivalent rate. The total for this effort would equal \$61,936 (800 x \$77.42).

2. Workforce Familiarization

GSA contracting officers will need to become familiar with the new policy at GSAR 502, 538, and 552. The GSA

³⁰ 2023 Rest of US, 12 Step 5 x 2.0 fringe = \$77.42; the rate is adjusted upward by 100% to adjust for overhead and benefits.

contracting officers will need to review these changes, interpret them, and apply them as prescribed.

GSA contracting officers are required to remain current on policies for procurement, such as changes to the GSAR. Review of such policy changes are considered a part of the normal duties of contracting personnel. As such, this analysis does not quantify the time and effort for contracting officers to become familiar with the rule. It is acknowledged that there is time and effort involved for the acquisition workforce to become familiar with the rule or the tools available and to assist contractors with compliance, though those potential burden hours and costs are minimal.

3. SUP-free Packaging Material Costs

GSA estimates that price premiums and discounts for SUP-free packaging will average out to zero additional cost.

4. Summary of GSA Costs

The total estimated GSA cost of implementation of this rule would be \$61,936.

Alternatives Considered

When researching how to address this rule, several solutions were considered. After publishing the ANPR, it

was determined that a rule that focused on reduction is preferable to alternatives such as recycling or mandatory elimination of plastic packaging.

GSA's mission is unrelated to environmental regulated programs such as recycling. Additionally, the recycling programs that GSA utilizes vary and are governed at local, municipal levels where the agency's offices are located.

Further, a rule seeking a mandatory elimination of plastic packaging may not be a feasible solution depending on what is being procured. For some supplies, such as healthcare products, plastic packaging can be a beneficial material. This rule is not seeking plastic elimination as users of Federal Supply Schedules may have a need for a product packaged with single use plastic, so a broad elimination may not be beneficial.

While there are identified alternatives to reach a sustainable outcome regarding packaging, GSA is cognizant to not issue a broad rule without providing space for industry to pivot, and is interested in public feedback. Given the different types of products that GSA procures, a rule asking for changes to packaging that provides flexibility is the best method to keep costs down, while reaching a sustainable solution.

Questions for the Public:

GSA is seeking public comment, including, as indicated above, regarding the potential impact of this rule on industry seeking to do business with the Federal Government through the FSS program.

Questions that GSA are asking the public about are as follows:

1. Are the definitions as currently described in the proposed rule clear?
2. Are the identification questions described in the proposed provision clear?
3. If you are a small business, do you foresee any potential impacts from the proposed rule? If yes please clarify if you anticipate either positive or negative impacts.
4. Are the time estimates provided in the current analysis accurate? Current analysis is 1 hour to learn how to register in the e-tool, 2.1 hours for SUP-free packaging identification, and 20.1 hours for the SUP-free packaging research?

IV. Executive Orders 12866, 13563, and 14094

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 ([Modernizing Regulatory Review](#)) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563.

OIRA has determined this rule to be a significant regulatory action. As a significant rule, this action is subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Regulatory Flexibility Act

GSA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S. 601, et seq. because the rule change allows for many different solutions to the offeror as to how to propose a solution that considers transitioning from plastic packaging to SUP-free packaging.

Furthermore, the rule change does not dictate how to determine what is redundant packaging or not, as discussed throughout the above analysis. Industry partners, to

include small entities, have flexibility to provide solutions that meet their business needs, as well as potentially save cost by reducing redundant packaging. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603 and is summarized below.

The proposed rule will apply to large and small businesses. For purposes of this assessment, information generated from the FAS Schedule Sales Query Plus (SSQ+) has been used as the basis for estimating the number of contractors that may be involved. There are approximately 14,000 FSS contractors, of which over 12,000 (85%) were small business entities.

The rule includes a provision for offerors to self-identify if they include single-use plastic (SUP) free packaging. The manner in which the offeror is answered, is then visible in a GSA electronic tool, which is provided by the agency. There are no fees associated with the identification tool, and the provision consists of two questions.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. Rule alternatives that could meet similar objectives are not advantageous to either the GSA or industry due to excessive cost and burden. An alternative would be to mandate specific types of packaging. Depending on the industry, there may be unintended cost consequences for a total change in packaging (for example transitioning from plastic to glass, the unintended cost might be due to transportation of a heavier product). For this reason the rule provides flexibility to industry to offer the Government solutions on reducing waste.

The Regulatory Secretariat will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from

small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will consider comments from small entities as they relate to existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2022-G517) in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 3501) does apply because the proposed rule contains information collection requirements. The existing Office of Management and Budget (OMB) Control Number 3090-0303 titled "Federal Supply Schedule Solicitation Information" will be updated to reflect the information to be collected through GSAR 552.238-XXX and GSAR 552.238-YYY.

A. Public Reporting Burden

Public reporting burden specific to this proposed rule and the revision to collection of information previously approved is voluntary and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

GSAR 552.238-XXX

The annual reporting burden is estimated as follows:

Respondents: 3,500

Responses Per Respondent: 1

Total Responses: 3,500

Hours Per Response: 2

Total Burden Hours: 7,000

GSAR 552.238-YYY

The annual reporting burden is estimated as follows:

Respondents: 3,500

Responses Per Respondent: 1

Total Responses: 3,500

Hours Per Response: 2

Total Burden Hours: 7,000

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please

cite "Information Collection 3090-0303", in all correspondence.

List of Subjects in 48 CFR Parts 502, 538, and 552.

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive,

Office of Acquisition Policy,

Office of Government-wide Policy,

General Services Administration.

Therefore, GSA proposes amending 48 CFR parts 502, 538 and 552 as set forth below:

1. The authority citation for 48 CFR parts 502, 538 and 552 continue to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

PART 502-DEFINITIONS OF WORDS AND TERMS

2. Amend section 502.101 by adding in alphabetical order the definitions of "Packaging", "Plastic", "Single use plastic (SUP)", and "Single-use plastic (SUP) free packaging" to read as follows:

502.101 Definitions.

* * * * *

Packaging is the material used to protect an item. Packaging includes, but is not limited to: brand packaging, ancillary packaging, grouped packaging, and redundant packaging.

(1) Brand packaging, sales packaging or primary packaging is packaging intended to provide the user or consumer with the individual unit of the product, such as plastic casing.

(2) Shipping packaging, serves as protection for the goods to ensure safe transport to the end customer, including:

(i) Ancillary packaging or transport packaging is packaging intended to secure the product, such as packing peanuts, wrapping materials, or molded materials.

(ii) Grouped packaging or secondary packaging is packaging intended to bundle, sell in bulk, brand, or market/display products.

(iii) Redundant packaging or unnecessary packaging is packaging that does not add any measurable protection to the supply being shipped, such as multiple layers of bubble wrap to an already durable product that is encased in a cardboard box. An example of this is a home testing kit with all plastic components already packaged in a cardboard box with cardboard inserts to absorb shock, that is then shipped in multiple layers of bubble wrap. In this example the bubble wrap is the redundant single-use plastic packaging.

Plastic means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" excludes natural rubber or naturally occurring polymers such as proteins or starches.

Single-use plastic (SUP) packaging means any plastic used for the containment, protection, handling, delivery,

or presentation of goods by a producer for a consumer with the intent of being disposed of immediately after use. Disposal of the product meaning that it is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer. Packaging includes, but is not limited to ancillary packaging, brand/sales packaging, grouped packaging, and redundant packaging.

Single-use plastic (SUP) free packaging means product or shipping containment materials free of single-use plastic. Examples may include, but are not limited, to corrugated cardboard, paper products, and paper backed tape.

PART 538-FEDERAL SUPPLY SCHEDULE CONTRACTING

3. Amend section 538.273 by-
 - a. Adding paragraph (a) (4);
 - b. Removing from paragraph (b) the phrase "to 52.212-1" and adding "to FAR 52.212-1" in its place;
 - c. Removing from paragraph (c) the phrase "to 52.212-2" and adding "to FAR 52.212-2" in its place;
 - d. Removing from paragraph (d) the phrase "to Clause 52.212-4" and adding "to FAR 52.212-4" in its place;
 - e. Adding paragraph (d) (38); and
 - f. Removing from paragraph (e) the word "clause".

The additions read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(a) * * *

(4) 552.238-XXX, Single-use Plastic Free Packaging Identification.

* * * * *

(d) * * *

(38) 552.238-YYY, Single-use Plastic Free Packaging Availability.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 552.238-88 by-

- a. Revising the date of the clause; and
- b. Adding paragraph (c).

The revision and addition read as follows:

552.238-88 GSA Advantage!®.

* * * * *

GSA Advantage!® (DATE)

* * * * *

(c) *Single use plastic (SUP) free packaging icon.*

Contractors are encouraged to utilize the GSA Advantage!® single-use plastic (SUP) free packaging icon when applicable (see 552.238-XXX). The offeror may include in

their price list if the contractor is providing SUP-free packaging (either for shipping or as part of the product packaging) at either a price premium or discount (see 552.238-YYY).

(End of clause)

6. Add section 552.238-XXX and 552.238-YYY to read as follows:

552.238-XXX Single-use Plastic (SUP) Free Packaging Identification

As prescribed in 538.273(a), insert the following provision:

Single-use Plastic Free Packaging Identification (DATE)

(a) Single-use plastic free packing promotions.

Ordering activities may focus their GSA Advantage!® search on the designated icons and price to meet climate objectives. Contractors who want to be considered must include SUP-free packaging as defined in 502.101.

(b) *Procedures*. Offerors may complete the information in paragraph (c) when the resulting contract includes supplies.

(1) *SUP-free brand packaging*. Schedule contractors may incorporate this information as part of their Schedule price list once the products that utilize SUP-free brand

packaging are incorporated under their Schedule contract, prior to competing for an order for the identified product.

(2) *SUP-free shipping packaging.* If the offeror is a reseller who is unable to address the brand packaging, but would like to pursue the icon for SUP-free shipping packaging, they may identify this availability.

If already identified, notify the Schedule contract's contracting officer with your response.

(c) *Optional identification requirements.* In order to be considered for the designated icons noted in paragraph (d), the offeror must provide the following information.

(1) *SUP-free brand packaging.* The offeror identifies that some or all supplies delivered under a contract resulting from this solicitation ____ will use SUP-free brand packaging. SUP-free brand packaging where applicable should be included in the offer's price list.

(2) *SUP-free shipping packaging.*

(i) The offeror identifies that some or all the supplies to be delivered under a contract resulting from this solicitation ____ will use SUP-free shipping packaging. SUP-free shipping packaging where applicable should be included in the offer's price list.

(ii) If the offeror responded "will" in paragraph (c)(i) of this provision, the offeror identifies that the

SUP-free shipping packaging ____ does need to be requested by the ordering official.

(d) *Identification standards.* SUP-free packaging icons for the types identified in paragraph (c), will be available on GSA Advantage!®, as applicable.

(e) *Verification of SUP-free packaging.* An offeror, in identifying an item with SUP-free packaging, must possess evidence or rely on a reasonable basis to substantiate the claim. The Government will accept an offeror's claim of SUP-free packaging on the basis of possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of Provision)

552.238-YYY, Single-use Plastic (SUP) Free Packaging

Availability

As prescribed in 538.273(d), insert the following clause:
Single-use Plastic Free Packaging Availability (DATE)

(a) *Definitions.* As used in this clause—
Single-use plastic (SUP) packaging means any plastic used for the containment, protection, handling, delivery, or presentation of goods by a producer for a consumer with the

intent of being disposed of immediately after use. Disposal of the product meaning that it is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer. Packaging includes, but is not limited to ancillary packaging, brand/sales packaging, grouped packaging, and redundant packaging.

Single-use plastic (SUP) free packaging means product or shipping containment materials free of single-use plastic. Examples may include, but are not limited, to corrugated cardboard, paper products, and paper backed tape.

(b) *General*. The Contractor, in connection with this contract, is encouraged to—

(1) Evaluate their products for redundant or unnecessary packaging that can be eliminated without affecting quality.

(2) Package all products for shipment according to the Government's instructions or, if there are no instructions, in a manner sufficient to ensure that the products are delivered in undamaged condition with as little plastic waste material as possible.

(3) Limit the use of plastic packaging materials that have a high likelihood of not being reused or recycled, as appropriate (e.g., plastic casing or wrapping).

(4) Adopt SUP-free packaging to the maximum extent practicable, as appropriate.

(c) *Procedures.*

(1) *Price premiums and discounts.* For any single-use plastic (SUP) free packaging identified per 552.238-XXX, SUP-Free Packaging Identification the Contractor may include in the submitted price list (see the MAS solicitation instructions for submitting price list, including I-FSS-600) SUP-free packaging. The submitted price list may include a separate means of displaying information regarding product packaging. If the contractor is providing SUP-free packaging at either a price premium or discount, this should be clearly identified in the submitted price list.

(2) *Submission requirements.* As additional SUP-free packaging becomes available, the Contractor is encouraged to notify GSA of these changes, and is responsible for keeping all electronic catalog data current.

(3) *Identification of SUP-free packaging.* For easy identification of SUP free packaging, once available, GSA will use a SUP-free packaging icon in GSA Advantage!®.

(i) Offerors who provide SUP-free packaging and want to benefit from the GSA Advantage!® SUP-free packaging icon

must provide the information required in 552.238-XXX, Single-use Plastic (SUP) Free Packaging Identification.

(ii) The Contractor is encouraged to place the GSA logo and GSA Advantage!® SUP-free packaging icon on their website and FSS price list for applicable supplies, see <https://www.gsa.gov/logos>. If the Contractor elects to use the GSA logo or icon, the website must clearly distinguish between those items awarded on the GSA contract and any other items offered by the Contractor on an open market basis.

(d) *Reliability*. Accuracy of information and computation of prices for this clause is the responsibility of the Contractor. In addition to the other remedies available in the contract, the remedies may include, but are not limited to, the following:

(1) If SUP-free packaging is provided at a higher rate but different packaging is received, the Government may pursue corrective action.

(2) If SUP-free packaging is utilized, but the product received is damaged, the Contractor shall replace the item, or the Government may pursue corrective action.

(3) Inclusion of incorrect information in the price list regarding SUP-free packaging may cause the Contractor to correct and resubmit the price list.

(4) Failure to correct applicable information for this clause, may constitute sufficient cause for termination, pursuant to FAR 52.212-4, Contract Terms and Condition-Commercial Products and Commercial Services, or remedies as provided by law.

(End of clause)

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